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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,918	02/07/2002	Bernard Dautreppe	01107	3288

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ALEXANDRIA, VA 22314

EXAMINER

NGO, LIEN M

ART UNIT PAPER NUMBER

3754

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/831,918

Applicant(s)

DAUTREPPE ET AL.

Examiner

LIEN TM NGO

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. The Declaration under 37 CFR 1.132 filed 1/17/06 is insufficient to overcome the rejection of claims 43-55 and 58-61 based upon the claimed Rejection-35 USC 103 as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 20-42, 45, 48 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, "said sealed bottle", "said cork", and "said grooves" lack antecedent basis.

In claim 23, line 12, "an addition means" is indefinite, and in line 51; "said grooves" lacks antecedent basis.

In claim 26, "the tearing strain" lacks antecedent basis.

In claim 45, "said cone" and "the tearing stain" lack antecedent basis.

In claim 48, "said lower reinforcement means" lacks antecedent basis.

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In claim 52, "said upper reinforcement means" lacks antecedent basis; and "in terms of types" is indefinite.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-55 and 58-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference (2,617,801) in view of the German reference (2,234,223), and Druesne et al. (US 5,103,989) and further in view of Babiol (4,391,383).

The French reference teaches a champagne bottle with a neck and glass ring. The bottle is closed by a cork (2) and a metal wire (3) holds the cork in the bottle by locking under the bottle ring. The French reference further teaches an over-capping cover (4) made of aluminum, but the cover has only one line of weakness. The French reference does not teach the cover having two parallel lines of weakness forming a tear strip therebetween, the tear tab having notches and the location of the lower line of weakness being a distance H from the top of the cover and the location of the upper line of weakness being a distance L that is at least 0.5H.

The German reference teaches an overcap with two parallel lines of weakness

(upper 10, lower 11) to form a tear strip. The tear strip has notches adjacent the tear tab as shown in figures 1-2 and 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the overcap of the French reference with two parallel lines of weakness as taught by the German reference to form a tear strip with a tear tab having notches to allow for quick easy removal of the portion of the overcap above the lower line of weakness.

Druesne et al. teaches a similar cap that has a pull strip defined by two lines of weakness wherein the space between the two lines is a distance L which is at least 0.5 the distance between the bottom line and the upper end of the bottle neck. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the cover of the French reference with another line of weakness above the line of weakness 8 to define a tear strip between the two lines of weakness such that there is a distance L there between as taught by Druesne et al. so that the pull strip is larger and located more towards the upper end of the bottle. The lower part comprising lower reinforcement (h1 and h2) as claimed.

The combination of the French reference in view of the German reference and Druesne et al. does not disclose an upper reinforcement means 9 as claimed. Babiol teaches, in fig. 3, an upper reinforcement as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the upper part (the opening strip) in the cover of the combination of the

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French reference in view of the German reference and Druesne et al. with the reinforcement means, as taught by Babiol, in order to increase the rigid supporting of the trip.

With respect to claims 47 and 61, the combination, as set forth, discloses the claimed invention except for the tab width (L1) being 0.5L to L with L ranging from 1.5 to 4 cm or that the thickness of the material of the overcap is between 25-50m. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tab width (L1) such that between 0.5L to L with L ranging between 1.5 and 4 cm. and to make the thickness of the overcap be between 25-50/2m, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 20-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference (2,617,801) in view of Ferguson (2,780,379) and further in view of the French reference (FR 2318796) or Druesne et al. (5,130,989).

The French reference (2,617,801) teaches a champagne bottle with a neck and glass ring. The bottle is closed by a cork (2) and a metal wire (3) holds the cork in the bottle by locking under the bottle ring. The French reference further teaches an over-capping cover (4) made of aluminum, but the cover has only one line of weakness. The French reference does not teach the cover having two parallel lines of weakness forming a tear strip therebetween, the tear tab having notches and the location of the lower line of weakness being a distance H from the top of the cover and the location of the upper line of weakness being a distance L that

is at least  $0.5H$ ; and method of producing the cover comprising cutting out a blank of arc of a skirt.

Ferguson teaches, in figs. 2 and 3, teach a method of producing a cover for a bottle top comprising cutting out a blank of arc of a skirt; the cover having two parallel lines of weakness forming a tear strip therebetween, the tear tab having notches, upper and lower reinforcement means 27 and gum in an inner surface of skirt.

The French reference (2318796) or Druesne et al. teaches a similar cap that has a pull strip defined by two lines of weakness wherein the space between the two lines is a distance  $L$  which is at least  $0.5$  the distance between the bottom line and the upper end of the bottle neck.

It would have been obvious to one of ordinary skill in the art at the time of the invention to make the cover of the French reference (2,617,801) with a method of producing a cover for a bottle top comprising cutting out a blank of arc of a skirt; the cover having two parallel lines of weakness forming a tear strip therebetween, the tear tab having notches, upper and lower reinforcement means 27 and gum in an inner surface of skirt, as taught by Ferguson, and the tear trip having a length as claimed, as taught by The French reference (2318796) or Druesne et al., in order to provide an easy-to-open cover for a wine bottle.

***Response to Arguments***

6. Applicant's arguments with respect to claims 20-61 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3754



April 3, 2006